IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/01/2004

CORAM

The Honourable Mr. Justice V. KANAGARAJ

Crl.O.P. No.20810 of 2003
and
Crl.M.P. No.5935 of 2003

M.K.G. Selvarajan ... Petitioner

-Vs-

State, rep. by the Deputy
Superintendent of Police,
Crime Branch, C.I.D., Metro,
Chennai - 600 002. ... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure
praying for the relief as stated therein.

For Petitioner : Mr. N.R. Elango

For Respondent : Mr. A.N. Thambidurai,
Govt. Advocate (Crl. Side)

:O R D E R

The above Criminal Original Petition has been filed praying to
call for the records in C.C. No.9 of 2001 on the file of the Court of I
Additional Sessions Judge, City Civil Court, Chennai, and quash the same.

2. Tracing the history of the case, it comes to be known that
the petitioner was working as a Senior Bailiff in the City Civil Court during
the year 1994; that on a complaint filed by the Registrar, Small Causes Court,
a case was registered by the respondent-police in C.B. C.I.D. Metro Crime
No.7 of 1997 and a charge sheet was filed for an offence punishable under
Sections 466, 471 read with 466, 147, 451, 42 7 read with 120-B I.P.C.
against eleven accused, including the petitioner; that the petitioner is said
to have committed offences punishable under sections 147, 451, 380, 466, 471
read with 466 I.P.C.; that in the very same crime number, another final report
was filed citing the petitioner and another as accused alleging that the
petitioner had committed an offence punishable under Section 7 of the
Prevention of Corruption Act on the ground that the accused evicted one S.
Shanmugasundaram illegally from door No.17/1, Thakkudin Khan Bahadur Street,

Triplicane, and also obtained signatures of two persons by name Ramesh and Kumar as witnesses for delivery of possession through one Babu; that the respondent, before filing the charge sheet, obtained the sanction for prosecuting the petitioner from the Appointing Authority under section 19(1)(c) of the Prevention of Corruption Act, 1988 and no sanction was obtained under Section 197 Cr.P.C.; that taking cognizance of the offences under the Indian Penal Code against the petitioner is not valid in law and hence he would seek for the relief extracted supra.

3. The complaint against the accused is that on 24.12.1993, the petitioner as the Senior Bailiff, while executing the Warrant of possession at No.17/2, Thakkudin Khan Bahadur Street, Triplicane, in his official capacity as public servant, with an intention to get bribe, represented to A.2 Hussain, with whom the possession has to be handed over, that he could not execute the warrants immediately; that thereafter, the said Hussain took the petitioner inside the house and gave him Rs.10,000/= as gratification to evict one Shanmugasundaram from the said house; that the petitioner ordered forcible eviction of the said Shanmugasundaram from the house bearing door No.17/2 and hence, committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

4. The case of the petitioner is that based on the complaint of the Registrar, Small Causes Court, Chennai, a case was registered by the respondent for offences punishable under Sections 120-B, 147, 341, 4 47, 448, 427, 380, 161, 193, 196 and 199 IPC and a final report has been filed for offences punishable under Sections 466, 471 r/w. 466, 1 47, 451, 427 r/w. 120-B IPC against 11 accused, including the petitioner. The petitioner further submits that in the very same Crime number, another final report has been filed citing the petitioner and another as accused for the offence committed under Section 7 of the Prevention of Corruption Act. The contention of the petitioner is that both the two charge sheets have been laid in the case registered in one and the same Crime No.7/97, the first one by the Crime Branch CID, Metro Wing taking up the investigation and the second one by the High Court Vigilance Inspector of Police attached to the High Court Vigilance.

5. During arguments, the learned counsel appearing for the petitioner would also cite the following judgments reported in
(i) 2000 SCC (Cri) 1202 (Surendra Pandey v. State of Bihar and others)
(ii) 2000 SCC (Cri) 872 (Gauri Shankar Prasad v. State of Bihar and another)
(iii) The Bombay Law Reporter 660 (Natwarlal Sakarlal Mody v. The State of Bombay)
(iv) AIR 1999 SC 2405 (State of Kerala v. V.Padmanabhan Nair)
(v) 1998 SCC (Cri) 1(Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan and others)
(vi) 2000(4) Crimes 152 (SC) (Abdul Wahab Ansari v. State of Bihar and Anr.)

6. In the first judgment cited above it is held 'the act complained

of is intrinsically connected with the discharge of the official duty. In this view of the finding, it must be held that Section 197 CrPC. gets attracted, even if the alleged act was in excess of the discharge of the official duty.'

7. In the second judgment cited above it is held that 'The object of the section is to save officials from vexatious proceedings against Judges, Magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty he has no privilege.'

8. In the third judgment cited above it has been held that ' Separate trial is the rule and joint trial is an exception.'

9. In the fourth judgment cited above it is held that 'An accused facing prosecution for offences under the Prevention of Corruption Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences.'

10. In the 5th judgment cited above it is held:
"The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. The question of sanction can be considered at any stage of the proceedings."

11. In the last judgment cited above it is held:
"On a plain reading of the provisions of Section 197 makes it crystal clear that the Court is prohibited from taking cognizance of the offence except with the previous sanction of the competent authority. There is no requirement that an accused should wait for taking such plea till the charges are framed."
On such arguments the learned counsel for the petitioner would pray to grant the relief extracted supra.

12. On the other hand the learned Government Advocate would clarify that though two different charge sheets one for the IPC offences and the other for the commission of offence in one and the same crime under the Prevention of Corruption Act, 1988 have been laid by the prosecution, still, it is up to the trial Court to frame the charges according to the warranting provision of

law and therefore, it is up to the trial Court to frame the charges and therefore, question of quashing of the charge sheet does not arise at all. Regarding the sanction to be obtained under Section 197 Cr.P.C. the learned Government Advocate would apprise this Court that it is not at all necessary in the case of the petitioner and therefore, the sanction was not obtained. On such arguments the learned Government Advocate would pray to dismiss the above Criminal Original Petition.

13. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to know that mainly on two grounds the petitioner has come forward to file the above Criminal Original Petition firstly that dual charge sheets have been filed in one and the same crime number for one and the same offence, which cannot be sustained in law since two trials cannot be held nor twice any accused could be punished for one and the same offence. The case in hand particularly connecting the petitioner is nothing but one registered for the commission of a very serious offence of forging the official documents and making the forged document appears genuine etc., besides obtaining a bribe of Rs.10,000/- for not executing the process of the Court and to evict a different person in order to save the person who is to be evicted, by manipulation of records wantonly and deliberately by the petitioner who was working as the Senior Bailiff in the City Civil Court, Chennai during the year 1994, who has been charged for the offence punishable under Sections 466, 471 r/w 466, 147, 451, 427 r/w 120B IPC. among 11 accused besides becoming punishable by another charge under Section 7 of the Prevention of Corruption Act, 1988 and in fact the competent authority, the Principal Sessions Judge, City Civil Court, Madras has accorded sanction for the petitioner to be prosecuted under Section 19(1)(c) of the Prevention of Corruption Act and therefore, the second contention of the petitioner is that the sanction accorded by the competent authority is only pertaining to the case registered against the petitioner under the penal provisions of the Prevention of Corruption Act, 1988 and the same cannot be taken for granted serving the purpose for prosecuting the petitioner under the other IPC Sections noted above and it is incumbent on the part of the prosecution to obtain sanction under Section 197 Cr.P.C. so far as prosecution of the petitioner under the I.P.C. Sections are concerned since he is a Government servant protected under the said provisions of law.

14. No doubt, Section 197 is designed for affording protection for Public Servants but not all the public servants and not in every act indulged in by a public servant. Limitations are there in this regard, firstly the Section is applicable only to a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the Government against the commission of offence while acting or purporting to act in the discharge of his official duty.

15. First of all plainly it could be decided that the petitioner being the Senior Bailiff is neither a Judge nor a Magistrate nor even a public servant nor removable from his office except by or with the sanction of the Government, he is a Government Servant who could be removed by the competent authority.

16. At this juncture a little argument needs necessary; that even decades back this question of sanction came up, before the Supreme Court based on a maxim to the effect that every act done by the Government authority is deemed to be the act of Government, since he derives the power only from the Government and in his personal capacity. However, the Supreme Court gave clarification and altered the maxim and clarified that in olden days all the Government powers were heaped together with one or some hands, particularly during monarchical regime every power had to be derived from the Government. But now on account of Legislation of laws, it cannot be said that the competent authority either for appointing or for removal of a Government servant has to derive the power from the Government, but from the enactment and therefore, the maxim could not be applied to cases of such nature as it is one in hand.

17. The upper forums of law have gone further assessing the merit of the cases falling under the protective coverage of Section 197 Cr.P.C. and ultimately settled that the Section is applicable only to the commission of lawful acts committed by the Government servants of that category in discharge of his lawful duties and therefore, all acts purported to have been done by a Government servant cannot be said to be in discharge of his lawful duties and wherever acts with malicious intention have been indulged in particularly wherever malice forms part of the act, or such acts done by a Judge or Magistrate or a Government servant of that category who cannot be removed but by the Government are not protected under Section 197 and therefore, no sanction under this particular provision of law need be necessary. In short it is only the lawful acts in discharge of the official functions which are protected under Section 197 for the prosecution of which sanction is necessary and not for those acts purported by the Judge or Magistrate or the public servant in which malice is attached for the prosecution of which sanction is not at all necessary.

18. These propositions have been long back held and followed in very many decisions by the upper forums of law in general and by the Honourable Apex Court in particular. While such being the position of law as per the first proposition held regarding the status of those who have not been mentioned in Section 197 Cr.P.C., as perk which it is only the Judges the Magistrates and those public servants who could not be removed from out of service, save by the Government are only entitled to claim the benefit of the section and not every public servant such as the petitioner who could not be said to be removed only by the Government and therefore, sanction under Section 197 is not at all necessary for in the case registered against the petitioner since the Section is not at all meant for such category of public servants like the petitioner who could very easily be removed by the competent authority who accorded sanction for the prosecution of the case registered under the provision of the Prevention of Corruption Act that is by the Principal Sessions Judge, City Civil Court, Chennai and therefore, needless to mention that the petitioner cannot claim the benefit of Section 197 Cr.P.C. since he does not fall within the ambit of the Section.

19. Secondly, the act perpetrated by the petitioner even though meant for discharge of the official duty which has not been done in the legal manner

in due discharge of his official duty i.e. the execution of the process of law but deviated from the official and lawful discharge of duties, since the petitioner started indulging in acts malicious in nature, such of those criminal acts indulged in by the petitioner are not attracted by Section 197 of Cr.P.C. and in short it could be said that the petitioner is not entitled to seek protection under Section 197 Cr.P.C. which is meant only for protecting those offences which arise in the course of the discharge of the lawful duties and responsibilities in a lawful manner by such of Government servants covered under Section 197 of Cr.P.C. who could not be removed from out of service save by the Government and therefore, the sanction that is sought to be required to have been obtained by the prosecution for prosecuting the petitioner under the IPC Sections is not at all a requisite in the case in hand since the sanction for the prosecution of a Government servant in general is only required under the provisions of the Prevention of Corruption Act 1988 and since this has been complied with, the prosecution of the petitioner in the manner that it has been dealt with is perfectly right and it is up to the trial Court to decide the case on trial.

20. Regarding the dual charges alleged to have been placed before the court it is not that the trial Court is going to act upon the said charges since based on the available materials placed on record the lower Court is bound to frame the charges based on which alone the trial will commence and therefore, the filing of the charge by the police is not going to affect the case in any manner and therefore, this Court does not find any valid or tangible reason to cause its interference into the ongoing trial procedures undertaken by the trial Court and hence the following order:
In result,
(i) the above Criminal Original Petition does not merit acceptance for the forgoing reasons assigned and becomes only liable to dismissed and is dismissed accordingly;
(ii) consequently, Crl.M.P.Nos.5932 and 5935 of 2003 are also dismissed.

gr.

CRL.O.P.No.20810 OF 2003.

V.KANAGARAJ, J.
Immediately after pronouncement of the above order, the learned counsel for the petitioner has a request to be made with the Court pertaining to certain anomalies that may occur if the charge-sheets laid are allowed to remain in the same condition.

2. Besides certain vital questions raised have already been considered and determined by this Court, it is also thought fit to add that in any event, any other such irregularity or error apparent on the face of the charge-sheet or other vital aspect of the case the petitioner will be at liberty to raise those points before the Court of trial either at the time of framing of the charges and preliminary questioning or at the appropriate time during the course of trial and the trial Court shall entertain such objections

and with due opportunity for the other side being heard, shall decide those issues on merits and in accordance with law.

21.1.2004.
Rao

gr.
V.KANAGARAJ,J

To
1. The Deputy Superintendent of Police, Crime Branch, C.I.D., Metro,Chennai - 600 002.
2. The I Additional Sessions Judge, City Civil Court, Chennai.